

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH DAKOTA  
NORTHERN DIVISION

IN RE: )  
 )  
LYNN HENRY MAASS and )  
BRENDA JEAN MAASS, )  
d/b/a Agritech, Inc. and )  
Crop Patrol, Inc., )  
 )  
Debtors. )

CASE NO. 90-10074-INH  
CHAPTER 13  
MEMORANDUM OF DECISION

The matter before the Court is the request for costs by creditor Centrol, Inc., of South Dakota as set forth in its Motion to Dismiss, or in the Alternative, for Relief from Stay. This is a core proceeding under 28 U.S.C. § 157(b) (2) . This ruling shall constitute Findings and Conclusions as required by Bankr. Rs. 7052 and 9014.

I.

Debtors filed a Chapter 13 petition on April 25, 1990 as "LYNN MAASS [REDACTED] and BRENDA MAASS [REDACTED] d/b/a/ Agritech, Inc. and Crop Patrol, Inc. Debtors". Centrol, Inc., of South Dakota (Centrol) filed it Motion to Dismiss, or in the Alternative, for Relief from Stay (Motion) on July 9, 1990 and argued the case should be dismissed because Debtors' petition: (1) exceeded the unsecured debt limitation for Chapter 13 cases established by 11 U.S.C. §109(e); and (2) was filed in bad faith for "a nonbankruptcy related purpose" and because Debtors' schedules were "deliberately completed with false and erroneous information which materially misstates the Debtors' financial condition[.]" In the alternative, Centrol sought relief from the automatic stay so that state court litigation involving Debtors and Centrol could proceed. Costs were sought. Centrol filed a brief and affidavit of counsel in support of its Motion.

Debtors filed a response to the Motion and offered to amend their schedules to properly differentiate between types of debts and show that Debtors meet the unsecured, non contingent, liquidated debt limitation of § 109(e). Debtors denied the

petition was filed in bad faith or that it contained deliberately false information. Debtors resisted Centrol's request for relief from the stay and Centrol's request for costs and attorneys' fees. Debtors also sought modification of the stay to pursue relief from non-competition provisions of a preliminary injunction issued by the state court.

A hearing on shortened notice was held July 24, 1990. Lengthy arguments of counsel were heard. The Court granted relief from the stay as requested by Centrol. That Order was entered July 30, 1990. The Motion to Dismiss was taken under advisement.

On September 25, 1990 -- two months after the hearing -- Debtors filed Amended Schedules A-2 and A-3, as is permitted under Bankr. R. 1009(a). The Petition was not amended to delete the corporate Debtors and the Schedules were not amended to distinguish corporate assets and liabilities from those of the individual Debtors. By Order and Memorandum of Decision entered October 10, 1990, the Court dismissed the case because Debtors' Petition included ineligible corporate Debtors, contrary to 11 U.S.C. § 109(e), which provides that only an individual may be a Chapter 13 debtor. Centrol's request for costs, including attorneys' fees, was reserved.

Centrol's Motion specifically requested that the Court award Centrol "its costs and disbursements herein, including reasonable attorneys' fees in an amount not less than \$3,000, together with all such other and further relief as the Court shall deem just and equitable." Centrol has not filed an itemization of the services rendered or expenses incurred in connection with its Motion. In its brief, Centrol argued sanctions against Debtors, their attorney, or both are warranted under Bankr. R. 9011.

## II.

Bankruptcy Rule 7054 states the Court may allow costs to the prevailing party in an adversary proceeding. Pursuant to Bankr. R. 9014, Bankr. R. 7054 is also applicable to contested matters,

including motions to dismiss and motions for relief from the automatic stay.

Section 1920 of Title 28 of the United States Code sets forth what may be taxed as costs by a "judge or clerk of any court of the United States [.]"

- (1) Fees of the clerk and marshal;
- (2) Fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case;
- (3) Fees and disbursements for printing and witnesses;
- (4) Fees for exemplification and copies of papers necessarily obtained for use in the case;
- (5) Docket fees under section 1923 of this title;
- (6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.

28 U.S.C. § 1920 (in pertinent part).<sup>1</sup> Attorneys' fees are generally not included as costs. Obin v. District No. 9 of the International Association of Machinists and Aerospace Workers, 651 F.2d 574, 580 (8th Cir. 1981).

Bankruptcy Rule 9011 allows the Court on motion or sua sponte to impose on a party or its attorney reasonable expenses incurred by the opposing party when the offending party files a pleading, petition, motion or other paper "that to the best of the attorney's or party's knowledge ... is [not] well-grounded in fact and is [not] warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law" or that is "interposed for any improper purpose, such as to harass, to cause delay, or to increase the cost of litigation."

---

1

While a bankruptcy court is not a court of the United States, see 28 U.S.C. § 451, it is an adjunct of the district court which may tax costs under § 1920. Therefore, § 1920 is applicable in bankruptcy cases. See Collier on Bankruptcy, 2ed., ¶7054.07.

## III.

The threshold question presented is whether Centrol has requested sanctions under Bankr. R. 9011 or costs under Bankr. R. 7054 or both. Centrol's brief clearly argues application of Bankr. R. 9011. Its Motion, however, is more generic and no statute or rule of procedure is referenced.

The Court of Appeals for the Eighth Circuit has clearly held that resolution of a request for attorneys' fees is separate from a judgment on the merits of an action or a determination of costs under Fed.R.Civ.P. 54. Obin, 651 F.2d at 580. The court also recognized the need for a hearing, with submission of additional evidence and argument, on a request for attorneys' fees that is separate from the hearing on the merits or costs. Id. at 581-82.

These procedural safeguards regarding attorney fee requests leads this Court to find that Centrol has requested only costs under Bankr. R. 7054. Since a determination of attorneys' fees is a collateral, independent claim requiring a hearing separate from the one held July 9, 1990 and since Centrol is not precluded from filing a motion for attorneys' fees under Bankr. R. 9011, see Obin, 651 F.2d at 583-84, Centrol is not prejudiced by this finding.

The remaining question is what costs, if any, under Bankr. R. 7054 and 28 U.S.C. § 1920 should be awarded to Centrol as the prevailing party on its Motion. Costs to the prevailing party on motions to dismiss, motions for relief from the automatic stay, or similar contested matters have generally not been awarded as a matter of course in bankruptcy cases in this District. See Local Bankr. R. 402. The Court concludes that the circumstances presented here do not warrant departure from that procedure.

An order denying Centrol's request for costs shall be entered.

Dated this 25th day of October, 1990.

BY THE COURT:

Irvin N. Hoyt  
Chief Bankruptcy Judge

ATTEST:

PATRICIA MERRITT, CLERK

By \_\_\_\_\_  
Deputy Clerk

(SEAL)

